IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

MFA.No. 1044 of 2000()

AGAINST THE JUDGEMENT/ORDER IN CP.10/1986 Dated 31/07/2000
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APPELLANTS: RESPONDENTS 1,2,4 AND 5

***1. T.C.IPE, SON OF CHERU, THOLATH HOUSE, KUNNAMKULAM.(DIED)(LR'S IMPLEADED)**

2. C.I.BABY, S/O.ITTOOP, CHEMMANNOOR HOUSE, KUNNAMKULAM.

3. C.K.RAMAN NAMBOODIRI, S/O. KESAVAN, CHERULY HOUSE, PENGAMUCK, TRICHUR DISTRICT.

4. K.P.MADHAVAN, S/O.PANKUNNI, KUTTANKULANGARA HOUSE, AKATHIYOOR, TRICHUR DISTRICT.

BY ADV. SRI.A.K.CHINNAN
SRI.P.J.PHILIP

RESPONDENTS: APPLICANT

THE OFFICIAL LIQUIDATOR, HIGH COURT OF KERALA, CARMEL BUILDINGS, BANERJI ROAD, ERNAKULAM (OFFICIAL LIQUIDATOR OF M/S.DIGVIJAY CHIT FUNDS (P) LTD. (IN LIQN.)

ADDL.RESPONDENTS IMPLEADED

2. AMMINI, W/O. LATE T.C.IPE,
THOLATH HOUSE, KUNNAMKULAM 680 503.

3. JENNY, S/O. LATE T.C.IPE
THOLATH HOUSE , KUNNAMKULAM 680 503.

ARE IMPLEADED AS ADDITIONAL RESPONDENTS VIDE ORDER DT. 9.2.2007 IN IA. 2468/03.

BY ADV. SRI.K.MONI.
SRI.UNNIKRISHNAN V.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. 5815/2000 IN MFA. NO.1044/2000

DISMISSED

29.06.2007 **SD/- J.B.KOSHY, JUDGE**

SD/ K.P.BALACHANDRAN , JUDGE

/TRUE COPY/

P.S. TO JUDGE

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J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No.1044 OF 2000

Dated 29th June, 2007

JUDGMENT

Koshy,J.

This appeal is filed by respondent Nos.1, 2, 4 and 5 in MCA.No.57 of 1992 challenging the order of the Company Court. The order was passed under section 543 of the Companies Act. The first respondent (first appellant) who was the Managing Director of the company with effect from 17.5.1985 died. His legal representatives did not join the appellants and they were made as respondents in this appeal. Original respondents 1, 2, 4 and 5 were the last Directors of the company viz. M/s.Digvijay Chit Funds (P) Ltd. It ceased business and notices were issued in not filing returns in time. Two shareholders of the company Gopi Nair and Subramaniam filed the company petition on 6.8.1986 for winding up under Section 433(c) and (b) saying that the company made default in delivering statutory report to registrar and in holding statutory meeting in time and suspended the business. The last Annual General Meeting of the members was held on 17.5.1985 and Auditor's Report and balance sheet as on 31/12/83 were passed. On the basis of the petition filed under Section 433(c), liquidation proceedings were initiated and the present petition was filed on the allegation that

effective steps were not taken by the respondents 1 to 4 and 6th respondent Manager in realising the debts due to the company.

2. The balance sheet and Document No.7 Auditor's Report show that no amounts are due from the company to anybody else. But, it is also stated by the auditor that loan advanced by the company are not being repaid regularly and company has not taken effective steps. Item Nos.5 and 6 of the Auditor's Report is as follows:

> "5.The company has not taken any loan, secured or unsecured from Companies, firms or other parties listed in the Register maintained under section 301 and 370(1C) of the Companies Act 1956.
>
> 6. The loans advanced by the Company and interest hereon are not being repaid in regular instalments as stipulated by the borrower. The Company has not taken necessary steps to recover this."

The Liquidator approached the Company Court for action under Section 543. Based on the above, it is stated that as per the accounts of the Company an amount of Rs.73,995.23 was the amount due to the company as mortgage loan which was not recovered by not taking effective steps. It is the case of the Directors that they have taken all steps. In the audit note itself it is shown that there is a suspense account of Rs.74,183/-. That shows that the above loans

were recovered, but, the Manager failed to account it. When sanction for initiating criminal proceedings against directors was sought for, Company Court refused sanction because it came to the conclusion that all possible steps were taken by the Directors. In any event, no loan amounts are due to any parties as per the audit report. The company went into liquidation from 1992. So far no claims were raised by any of the shareholders or any subscriber against the company. The amount said to be due to the company is only Rs.73,995.23. At the same time, there is excess amount of Rs.74,183/= in the suspense account. That shows that there cannot be any misfeasance on the part of the Directors and, in any event, no prima facie case against the Directors is made out for taking action under Section 543.

In the above circumstances, we allow the appeal and the impugned order of the Company Court is set aside.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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